

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION

IN RE

SEARS HOLDINGS CORPORATION, ET AL

CHAPTER 11

CASE NO. 18-23538 (RDD)

DEBTOR

(Jointly Administered)

MOTION DATE: February 14, 2019

MOTION TIME: 10:00am

MEMORANDUM OF LAW IN SUPPORT
OF MOVANTS MOTION FOR RELIEF FROM AUTOMATIC STAY NUNC PRO TUNC

FACTS

This application is before the Court on Motion of Wells Fargo Bank, N.A. as servicing agent for Deutsche Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2006-1 Asset-Backed Certificates, Series 2006-1 (“Movant”), seeks relief from the automatic stay as to the property located at 845 East 219th Street, Bronx, New York 10467 (the “Premises”).

On January 20, 2006, Bradley and Lorna Rutty borrowed \$315,000.00 from Fremont Investment & Loan as evidenced by a note (the “Note”). Said Note is secured by a mortgage from Bradley and Lorna Rutty on certain real property, commonly known as 845 East 219th Street, Bronx, New York 10467, and specifically described in said mortgage (the “Property”). The Mortgage was assigned from Mortgage Electronic Registration Systems, Inc. as nominee for Fremont Investment Loan to Deutsche Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2006-1.

On November 28, 2003 Sears Roebuck and Co recorded a judgment lien against Bradley B. Rutty and the Property in the amount of \$4,305.10 under Index # B03-57256.

Sears Holdings Corporation, et al filed bankruptcy under case number 18-23538, which case is being jointly administered

POINT 1

This Movant is entitled to nunc pro tunc relief from the automatic stay as requested in the within motion.

The Movant has filed a motion for relief from the automatic stay with respect to the real property known as 845 East 219th Street, Bronx, New York 10467.

Section 362(d)(1) and (2) provide as follows:

(d) On request of a party in interest and after notice and a hearing, the Court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay-

(1) for cause, including the lack of adequate protection of an interest in the Property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if-

(A) the Debtor does not have any equity in such property;

(B) such property is not necessary to an effective reorganization.

Section 362(d) is mandatory, not permissive. The Court shall grant relief from the stay for any of the reasons stated in the three subsections. In re Elmira Litho, Inc., 174 B.R. 892, 900 (Bk. Ct. S.D.N.Y. 1994); In re Touloumis, 170 B.R. 825, 827 (Bk. Ct. S.D.N.Y. 1994); In re Kleinman, 156 B.R. 131, 136 (Bk. Ct. S.D.N.Y. 1993); In re Diplomat Electronics Corp., 82 B.R. 688, 692 (Bk. Ct. S.D.N.Y. 1988).

Further, if any of the grounds for relief from stay apply the Court must grant the relief from stay.

Under Bankruptcy Code § 362(d)(1) relief may be granted for cause if the Debtor has failed to provide the secured creditor with adequate protection for its interest in the Property. Rutty's mortgage is in default to Movant and as such the Movant is entitled to pursue its remedies under state law including foreclosure. Movant desires to continue its foreclosure on the premises due to the ongoing default by Lorna and Bradley Rutty under the Mortgage. Due to the default, Movant's security interest is not adequately protected and as such pursuant to 362(d)(1) cause exists to terminate the automatic stay to allow the Movant to proceed with the foreclosure.

Further, pursuant to 362(d)(2) the real property is not necessary to an effective reorganization of the Debtor. In conclusion, Movant requests that this Court grant its motion for relief from the automatic stay with respect to the real property as described in the motion.

Dated: December 28, 2018



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